HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri S.R. Nayak, C.J.

Writ Petition No. 605 of 2005

PETITIONER

C. Das, son of Late M.S. Das, aged about 41 years, Occupation-Service, Posted as Constable, R.P.F., S.E.C.R., Bilaspur (Chhattisgarh).

Versus

RESPONDENTS

1. Union of India,
   Through : The Secretary, Ministry of Railway, New Delhi.
2. The Chief Security Commissioner, R.P.F., South Eastern Central Railway, Bilaspur (Chhattisgarh).
3. The Divisional Security Commissioner, R.P.F., South Eastern Central Railway, Bilaspur (Chhattisgarh).

Writ Petition No. 6245 of 2005

PETITIONER

C. Das, son of Late M.S. Das, aged about 41 years, Occupation-Service, Posted as Constable, RPF, South Eastern Central Railway, Bilaspur (Chhattisgarh).

Versus

RESPONDENTS

1. Union of India,
   Through The Secretary, Ministry of Railway, New Delhi.
2. The Chief Security Commissioner, RPF South Eastern Central Railway, Bilaspur (Chhattisgarh).
3. The Divisional Security Commissioner, RPF, South Eastern Central Railway, Bilaspur (Chhattisgarh).

Present :- Shri Rakesh Pandey, learned counsel for the petitioner.

Ms. Yoshita M, learned counsel for respondent No.1.

Shri P.S. Koshy, Advocate with Shri Vinod Deshmukh, learned counsel for respondents No.2 & 3

ORAL ORDER
(6th October, 2006)

Both these writ petitions were clubbed, heard them together and they are being disposed of by this common order.

(2) The facts of the case, in brief, are as follows : The petitioner – C.Das, while serving as Constable in the Railway Protection Force (for short "RPF"), Pendra, vide order dated 23-08-2003 marked as Annexure – P/2, produced in writ petition No.605 of 2005, was attached temporarily at DSC/RPF/R/Coy/BSP at Bilaspur. When the matter stood thus, the Divisional Security Commissioner, RPF, S.E.C. Railway, Bilaspur, vide his communication dated 12-10-2004 marked as Annexure-P/1, ordered the petitioner to report back to his original place at Pendra with immediate effect. The petitioner did not obey that direction of the Divisional Security Commissioner, RPF. On the other hand, the petitioner preferred writ petition No.4717 of 2004 in this Court against the above order (Annexure-P/1). In that writ petition, this Court did not grant any relief to the petitioner and while dismissing the writ petition on 03-01-2005, the Court permitted the petitioner to make an appropriate representation to the authorities. It appears that accordingly the petitioner made a representation to the authorities to retain him at Bilaspur, but, that representation was rejected by the respondents by order dated 09-02-2005. Feeling aggrieved by the said rejection, the petitioner has preferred writ petition No. 605 of 2005. At this stage itself, it needs to be noticed that the petitioner did not report for duty at Pendra as directed by the Divisional Security Commissioner, RPF, vide his letter dated 12-10-2004. Even after his representation was rejected by the respondents on 09-02-2005, he did not comply with the direction.

(3) In the above circumstances, the respondent - Disciplinary Authority issued a charge memo dated 10-05-2005 to the petitioner. As the

petitioner was not serving in the Department as on that date, the charge memo was sought to be served in person by the officials of the department, but, the petitioner refused to receive the same. In the circumstance, the officials pasted the charge memo at the door of the petitioner. The Disciplinary Authority appointed an Enquiry Officer to conduct departmental enquiry. The Enquiry Officer also sought to serve notices of enquiry dated 05-06-2005, 09-06-2005, 11-06-2005, 18-06-2005 and 01-08-2005 on the petitioner, but, the petitioner refused to receive all those notices. However, those notices were pasted on the door of the petitioner. The Enquiry Officer having conducted the enquiry submitted his report finding the petitioner guilty of misconduct alleged against him in the charge memo dated 10-05-2005. The Disciplinary Authority having concurred with the finding of the Enquiry Officer and having opined that the conduct of the petitioner was blameworthy and not conducive to the public service, by its order dated 28-10-2005 removed the petitioner from service as a disciplinary measure. The petitioner feeling aggrieved by the said action of the Disciplinary Authority has preferred writ petition No.6245 of 2005.

(4) I have heard learned counsel for the parties.

(5) Learned counsel for the petitioner would submit that there are certain circulars issued by the department itself which would show that ordinarily the spouses should be allowed to serve at the same place, and in the instant case the wife of the petitioner, at the relevant point of time, was serving in Bilaspur and therefore, there was no justification for the Divisional Security Commissioner, RPF, to re-transfer the petitioner to Pendra. Assailing the disciplinary action taken against the petitioner, learned counsel for the petitioner would submit that the enquiry was conducted by the Enquiry Officer behind the back of the petitioner and the petitioner was denied fair opportunity of being heard before the impugned

action was taken. On the other hand, learned counsel for the Railways, with reference to the original records of the disciplinary proceedings, would contend that the petitioner is guilty of grave form of misconduct and there was absolutely no justification for the petitioner to absent himself from duties in total disobedience of the lawful order issued by the Divisional Security Commissioner, RPF. It was pointed out that under Annexure-P/2 the petitioner was not transferred from Pendra to Bilaspur, but, he was merely attached to DSC/RPF/R/Coy/BSP that too, on temporary basis and that that order was withdrawn and the petitioner was ordered to return to his original place of posting at Pendra. It was contended that the disobedience of the lawful order issued by the competent authority with impunity and arrogance is a grave form of misconduct and in the circumstance, the penalty imposed by the Disciplinary Authority is quite proportionate to the gravity of the misconduct committed by the petitioner.

(6) Having heard learned counsel for the parties, a short question that arises for decision is whether the orders impugned in the writ petitions are vitiated on any permissible legal ground.

(7) Annexure-P/2, unmistakably would show that the petitioner while serving at Pendra was directed to serve at the unit in Bilaspur temporarily. Annexure-P/2 is not transfer order. Annexure-P/1 dated 12-10-2004 would also reflect that position. There is no need for me to dilate on this aspect further. Suffice it to state that even construing Annexure-P/2 dated 23-08-2003 as the transfer order, it is nobody's case that the authority which passed Annexure-P/2 had no authority to transfer the petitioner from Pendra to Bilaspur. Similarly, it is nobody's case that Divisional Security Commissioner had no legal authority to direct the petitioner to go back and report at Pendra with immediate effect. If Annexures-P/2 and P/1 are lawful orders issued by the competent authorities of the Railways, it is

trite, the petitioner was under the legal obligation to obey those lawful orders. It is unnecessary to emphasize that disobedience of lawful orders of superiors made in public interest is a grave form of misconduct. It is not that the petitioner was prevented from complying with the lawful orders under any extraordinary or compelling unavoidable circumstance. On the other hand, as the records disclose/speak and what learned counsel for the petitioner would tell the Court is that since the petitioner's wife was serving at Bilaspur, the petitioner did not obey the order Annexure-P/1. Unauthorized absence, disobedience of lawful orders with impunity and arrogance cannot lightly be viewed. Misplaced sympathy on the part of the Court would induce indiscipline in the administration of the Railways. In recent times, the Apex Court dealing with unauthorized absences of employees has expressed its strong disapproval of the orders passed by High Courts treating unauthorized absence as a trivial misconduct. In this case, the conduct of the petitioner was highly objectionable and unbecoming of a public servant. No exception could be taken to the rejection of the representation of the petitioner vide order dated 09-02-2005.

(8) See the arrogance and disobedience of the petitioner even after his representation was rejected on 09-02-2005; he did not think it proper to go back and report at Pendra, he again with impunity absented himself unauthorisedly from duty for months. The department too waited for nearly three months even after rejection of the representation before issuing charge memo dated 10-05-2005. The records would disclose that, in the interregnum, the department sent several reminders to the petitioner to resume for duty forthwith and all those advices and directions went in vain.

(9) This takes us to the disciplinary action taken by the department. There is no substance in the submission of learned counsel for the petitioner. It is true that the affected should be appraised is a constitutional

creed flowing from Article 14 of the Constitution of India. Unless the affected is appraised, there is no compliance of principles of natural justice and fair play in action. The question is whether the affected is appraised or not. What the law requires is that the affected person should be given a fair opportunity and if such an opportunity is given and the affected person does not make use of the opportunity, it should not lie in the mouth of the affected person to contend that some adverse order is passed against him without hearing. Here is a case where opportunity was sought to be given at every stage to the petitioner in the matter of serving the charge memo, conducting the enquiry on various dates, but, the petitioner, for the reasons best known to him, evaded the notices and absented himself from participating in the enquiry. If the petitioner himself is guilty of evading opportunity of hearing at his peril, it should not lie in his moth to contend before this Court that the impugned order of the Disciplinary Authority was made behind his back and without hearing.

(10) Merely because there are circulars issued by the Railway Administration that ordinarily married employed couple should be allowed to stay at one place, on the basis of such circulars no employee of the Railways could insist that, as a matter of right, that norm should be adhered to in all circumstances and exigencies. It is well settled that the administrative instructions issued by public authorities governing transfers and postings can be departed by the authorities in administrative exigencies and public interest. Personal hardship that may be caused to an employee on account of a transfer from one place to another is not a justification for an employee to disobey the lawful transfer order of the competent authorities. Transfer or posting is an incident of service. Who should work where is the prerogative of the employer to decide. The employees cannot dictate terms as to where they should serve.

(11) The penalty imposed on the petitioner delinquent as a disciplinary measure, in the facts and circumstances of this case and having regard to the gravity of misconduct committed by the petitioner, could not be regarded as the one that is disproportionate. In that of the view of the matter, there is no scope for applying the Wednesbury rule of reasonableness. Both the writ petitions are devoid of merit and they are accordingly dismissed. No costs.

Sd/-
Chief Justice

-/Gowri